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July 2, 2018

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43**

Dear Ms. Dortch:

On June 28, 2018, Angela Ball and I, of NBCUniversal Media, LLC (“NBCUniversal”) on behalf of USA Network, met in person with Alison Nemeth, Media Advisor to Chairman Pai, Mary Beth Murphy and Martha Heller of the Media Bureau, and Suzy Rosen Singleton, Will Schell, Rosaline Crawford, and Maria Mullarkey of the Consumer and Governmental Affairs Bureau regarding the above-captioned proceeding.

At the outset, we reiterated NBCUniversal’s support for an increase in the number of video-described hours per quarter (to 87.5 hours) that covered networks, including USA Network, must air beginning in July 2018. However, we shared our continued concern that the current and expanded rules only allow the affected networks to count a small fraction of described programming hours for compliance purposes, as explained in NCTA’s pending petition for partial reconsideration (“*Petition*”).<sup>1</sup>

In particular, we highlighted that despite USA Network’s accomplishments in video description, including averaging more than 1,400 described programming hours over the last

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<sup>1</sup> See NCTA Petition for Partial Reconsideration at 2-3 & n.4 (filed Sept. 11, 2017) (“*Petition*”).

several quarters, the network continues to be challenged by the restrictive treatment of repeat airings of video-described programming under the rules, which permit networks to count only a single rerun toward meeting the quarterly benchmark.<sup>2</sup> For example, in Q4 of 2017, USA described a total of 1,604.5 hours – i.e., 73% of the 2,208 total quarterly televised hours – but, during this same quarter, only 90 hours (or 5.6%) were countable for purposes of the video description rules.

We shared that USA Network has consistently ranked in the top five non-broadcast networks since the Commission reinstated the video description rules. This success results from its multi-faceted programming approach, which combines airing repeat episodes (including marathons) of the most popular off-network programming (like *Law & Order*, *NCIS* and *Modern Family*) throughout the day with new series and some live sports programming in prime time. This programming approach is successful because it responds to viewer demand. In fact, the success of USA Network’s model has allowed the network to develop and launch original prime time programming, including such successful new series as *Suits*, *Mr. Robot* and others, most of which are also described.

We explained that the rules should include a long-term “presumptive waiver” or “safe harbor,” which would enable a non-broadcast network with substantial amounts of video described programming to avoid the necessity of filing for individual waivers on a quarterly basis. We noted that since NCTA’s Petition was filed, we have further refined the proposal based on NBCUniversal’s discussions with representatives of the blind and visually-impaired community. Specifically, we proposed that the Commission adopt a presumptive waiver with a term of three years<sup>3</sup> for a non-broadcast network that certifies it will provide video description on (1) at least 1,000 total program hours each quarter without regard to repeats, *and* (2) at least 75% of any newly-produced non-live programming aired between 6 A.M. and midnight per quarter.

By adopting a presumptive waiver or safe harbor standard based on the total hours of described programming and described newly produced programming, the Commission will create the right incentives to encourage programmers to expand their video described hours without disruption to the top-rated non-broadcast networks’ established and successful business models.

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<sup>2</sup> 47 C.F.R. §79.3(c)(2).

<sup>3</sup> This period is intended to coincide with the effective three-year compliance window during which the top five non-broadcast networks are subject to the video description requirements, based on their Nielsen ratings (e.g., July 1, 2018 – June 30, 2021; July 1, 2021 – June 30, 2024; and so on).

Marlene H. Dortch

July 2, 2018

Page 3

Respectfully submitted,

/s/ \_\_\_\_\_

Margaret L. Tobey

cc: Alison Nemeth  
Mary Beth Murphy  
Martha Heller  
Suzy Rosen Singleton  
Will Schell  
Rosaline Crawford  
Maria Mullarkey